

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3200 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

and

HON'BLE MR.JUSTICE A.M.KAPADIA

- =====
1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the concerned : NO  
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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TEXPLAST ENGINEERS LTD.

Versus

UNION OF INDIA  
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Appearance:

1. Special Civil Application No. 3200 of 2004  
MR PARESH M DAVE for Petitioner No. 1-2  
MS DHARMISHTA RAVAL for Respondent No. 1-4  
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CORAM : HON'BLE MR.JUSTICE M.S.SHAH

and

HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 13/04/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Rule. Ms Dharmishtra Raval, learned senior

standing counsel for the Central Government waives service of Rule for the respondents.

2. What is challenged in this petition under Article 226 of the Constitution is the order dated 28.11.2003 (Annexure "B") passed by the Customs, Excise & Service Tax Appellate Tribunal, Mumbai in Stay Application Nos.1066 to 1068 of 2003 in Appeal Nos. 1665 to 1667 of 2003 requiring the petitioners to make a pre-deposit of Rs.2.5 lakhs for hearing of the appeals.

3. The order is challenged mainly on the ground that the petitioner-Company is registered as a sick industrial Company under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 ("the SICA" for short) and that, therefore, no coercive action can be taken against the petitioners for recovery of the arrears of excise duty in view of the provisions of Section 22 of the SICA.

4. Mr Paresh M Dave, learned counsel for the petitioners states that the impugned demand pertains to the period prior to the date on which the petitioner-Company's reference was registered by the BIFR and, therefore, the petitioner-Company is entitled to the protection of Section 22(1) of the SICA. Reliance is also placed on the decision of another Division Benches of this Court dated 8.9.1999 in SCA No.6370 of 1999 and connected matter and the decision dated 27.8.2002 in SCA No.6657 of 2002 at Annexure "D" Colly.

5. On the other hand, Ms Dharmishta Raval, learned senior standing counsel for the respondents has submitted that though the petitioners may be entitled to get protection under Section 22(1) of the SICA in respect of the past dues, the petitioners are not entitled to any such protection in respect of the period after the date of registration of the reference and has placed reliance on the decision of this Court dated 31.3.2004 in SCA No. 9027 of 2003.

6. In the aforesaid decision, this Court has taken the view that the protection under Section 22(1) of the SICA is available for the dues for the period prior to the date of registration of the reference of the Company as a sick industrial Company, but the sick industrial Company is required to pay current taxes like sales-tax because the seller/manufacturer passes on the burden of such taxes to the purchasers and, therefore, the sick industrial Company cannot be permitted to collect taxes from the purchasers and refuse to pay them over to the

Government.

7. There is no dispute about the fact that the pre-deposit order pertains to the demand for the period prior to the date of registration of the reference.

Hence, following the principle laid down in the aforesaid decision, we allow the petition by quashing the impugned order dated 28.11.2003 (Annexure "B") passed by the Customs, Excise & Service Tax Appellate Tribunal, Mumbai in Stay Application Nos.1066 to 1068 of 2003 and direct the Tribunal to hear Appeals No. 1665 to 1667 of 2003, without any pre-deposit but subject to the condition that the petitioners continue to pay current excise duty for the period after the date of registration of the reference before the BIFR.

Rule is made absolute to the aforesaid extent only with no order as to costs.

(M.S. Shah, J.)

(A.M. Kapadia, J.)  
sundar/-